

IN THE SUPREME COURT OF FLORIDA

INQUIRY CONCERNING
A JUDGE
NO. 02-487

Supreme Court Case
No. SC03-1171

**MOTION FOR CONTINUANCE
OF FINAL EVIDENTIARY HEARING SCHEDULED
FOR JANUARY 20, 2004**

The Honorable Gregory P. Holder, (“Judge Holder”), by counsel, respectfully moves the Hearing Panel of the Florida Judicial Qualifications Commission (“the Panel”), to continue the final evidentiary hearing presently scheduled for January 20, 2004. The continuance is being requested to enable Judge Holder’s counsel to reach a resolution with the Department of Justice regarding the permissible scope of the testimony to be given by Assistant United States Attorneys Jeffrey Del Fuoco and Jeffrey S. Downing, two key witnesses in this proceeding. The failure of the Panel to grant a continuance for this purpose will result in a denial of Judge Holder’s constitutional rights resulting in a fundamentally flawed proceeding. Additionally, a continuance is appropriate to allow the Panel to fully consider Judge Holder’s Motion, which is in the process of being filed, requesting dismissal of the charges against him based on the favorable resolution of the United States Air Force investigation. The grounds upon which this Motion is based are set forth below.

1. On July 16, 2003, the Florida Judicial Qualifications Commission

(“JQC”) filed formal charges against Judge Holder as a result of his alleged submission of a plagiarized research report (the “purported Holder paper”) to the MacDill Air Force Base Air War College in January 1998. An investigation was also instituted by the United States Air Force regarding the same allegations of plagiarism.

2. On December 8, 2003, Judge Holder’s counsel requested permission from the United States Department of Justice (“DOJ”) to depose Assistant United States Attorneys Mr. Jeffrey Del Fuoco (“Del Fuoco”) and Mr. Jeffrey S. Downing (“Downing”). Similarly, on December 15, 2003, the JQC requested permission from the DOJ to allow Del Fuoco, Downing and Assistant United States Attorney Kenneth Lawson (“Lawson”) to testify at the final evidentiary hearing. *See* Exhibit 1.

3. In response, on December 18, 2003, United States Attorney Paul I. Perez authorized the depositions, as well as the testimony at the final hearing, but restricted their testimony to the following:

- a. to identify copies of the alleged plagiarized paper;
- b. to identify copies of the paper written by Lieutenant Colonel Hoard from which the plagiarized material was taken;
- c. to identify the letter dated December 20, 2002 referring the matter to the Judicial Qualifications Commission;
- d. as to AUSA Del Fuoco only, to identify the documents he received from AUSA Lawson which bear date stamps numbers KELjd1-KELjd71; and
- e. as to AUSA Lawson only, to identify the papers which he gave to AUSA Del Fuoco.

See Exhibit 1.

4. The restrictions placed on their testimony are not well taken. Del Fuoco's testimony is being sought regarding actions performed as a member of the United States Army Reserve Corps – not as an ASUA – and his participation in both the Air Force and JQC investigations. *See* 28 C.F.R. §§ 16.21-16.26. Furthermore, like Del Fuoco, Downing's testimony is not being sought with regard to any investigation being conducted by the DOJ.

5. Importantly, these restrictions will effectively preclude Judge Holder from confronting the witnesses that have provided the primary, if not sole, evidence that forms the basis of the charges against him. More specifically, Judge Holder will be prevented from questioning Del Fuoco and Downing regarding, among other things, the following:

- a. the circumstances surrounding Del Fuoco's discovery of the purported Holder paper and Hoard paper in early 2002 at the United States Army Reserve Headquarters ("Reserve Headquarters") in St. Petersburg, Florida;
- b. the missing envelope and letter that accompanied the purported Holder paper and Hoard paper found by Del Fuoco;
- c. the circumstances surrounding Del Fuoco's discovery of an additional 171 pages of documentation in his off-site storage locker in October 2003;
- d. actions taken by Del Fuoco upon discovering the documents in early 2002 and October 2003;
- e. the chain of custody of the documents after they were discovered by Del Fuoco;
- f. actions taken by Downing once the documents were in his possession, including his involvement in providing information to the JQC; and
- g. Downing's discussions, or other communications, with Del Fuoco relating in any way to the purported Holder paper.

6. This testimony is crucial to these proceedings. Additionally, there are serious issues concerning Del Fuoco's credibility that are relevant to: a) the veracity of his testimony; and b) the weight of the evidence being proffered against Judge Holder. Moreover, there can be no credible dispute that the Hoard paper was stolen from Judge Holder's chambers. Since the Hoard paper and purported Holder paper allegedly were anonymously slipped under Del Fuoco's office door at the Reserve Headquarters, inquiries subsequently conducted by Del Fuoco and/or Downing, including as to who may have had access to this military facility, is critical to determining who may be responsible for the theft, as well as subsequent events.

7. Accordingly, the failure of the Panel to grant a continuance will result in a fundamentally flawed proceeding and constitute a denial of Judge Holder's due process rights as he will be unable to confront two key witnesses in this proceeding. *See e.g. Baber v. State*, 775 So. 2d 258 (Fla. 2000) (right of a defendant to confront his accusers is a basic constitutional right protected by both the United States and Florida Constitutions). Importantly, Judge Holder's liberty interest, including his reputation and livelihood, are at stake in this proceeding and, therefore, he must be afforded wide latitude in his questioning of Del Fuoco and Downing.

8. Judge Holder's counsel are currently using their best efforts to resolve this issue with the DOJ, and have initiated discussions with the DOJ requesting reconsideration of the restrictions placed on Del Fuoco's and

Downing's testimony.

9. Moreover, on December 19, 2003, the United States Air Force informed Judge Holder that, after fully considering the evidence in this case, it was restoring his status as an Air Force Judge Advocate. Consequently, Judge Holder is in the process of filing a Motion seeking dismissal of the charges brought against him in this proceeding.

10. It is highly unlikely that these issues will be resolved prior to the date currently set for the final evidentiary hearing.

Wherefore, Judge Holder respectfully requests that the Panel grant a continuance of the final evidentiary hearing currently scheduled for January 20, 2004. This will allow Judge Holder's counsel additional time to reach a resolution with the Department of Justice regarding the scope of the testimony of Del Fuoco and Downing and allow the Panel an adequate opportunity to fully consider the Motion to Dismiss.

Dated: January 2, 2004

Respectfully Submitted,

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Certificate of Service

I certify that on January 2, 2004, a copy of the foregoing Motion for Continuance of Final Evidentiary Hearing Scheduled for January 20, 2003 has been served by U.S. Mail to Ms. Brooke Kennerly, Hearing Panel Executive Director, 1110 Thomasville Road, Tallahassee, FL 32303; and by telecopier and U.S. Mail to: Honorable John P. Kuder, Chairman of the Hearing Panel, Judicial Building, 190 Governmental Center, Pensacola, FL 32501; John Baranek, Counsel to the Hearing Panel, Ausley & McMullen, P.O. Box 391, Tallahassee, Florida 32302; Charles P. Pillans, III, Esq., JQC Special Counsel, Bedell Ditmar DeVault Pillans & Coxe, P.A., The Bedell Building, 101 East Adams Street, Jacksonville, FL 333202; and, Thomas C. MacDonald, Jr., JQC General Counsel, 1904 Holly Lane, Tampa, FL 33629.

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